

**REMARKS**Summary of the Status of Claims

Claims 2-8, 12-40 and 54-56 are pending after entry of this paper. Claims 2-8, 12-40 and 54 have been rejected. Independent claim 12 and dependent claims 40 and 54 have been amended. New claims 55 and 56 have been added. Support for the amendment to claim 12 is found throughout the instant specification, for example, at page 6, lines 3-11 and page 17, line 21 of the specification. Claim 40 has been amended to perfect a change sought to be made in the prior amendment dated OCTOBER 17, 2007 but where single, rather than double brackets, were used. Claim 54 has been amended to correct typographical errors. New claim 55 finds basis in the original claims of the application. Support for new claim 56 is found throughout the instant specification, for example, at page 14, lines 6-10 of the specification. No new matter has been introduced by these amendments.

Reconsideration and withdrawal of the pending rejections in view of the above claim amendments and below remarks are respectfully requested.

Response to Rejections under 35 U.S.C. §112 - Indefiniteness

Claims 12-40 and 54 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regards as the invention because the Examiner found that claim 12 allegedly lacked an antecedent basis for the constituents of the device. Claim 12 has been amended to provide an appropriate antecedent basis, changing the terms "the user" to "a user," and setting forth in an organized format the components of

the device. Applicants respectfully request reconsideration and withdrawal of this ground of rejection.

Response to Rejection Under 35 U.S.C. §102

Claims 2, 4, 8, 12-13, 17, 19-26, 28, 30, 34-35, 39 and 54 were rejected under 35 U.S.C. §102(b) as being anticipated by Komatsu. (US-5,076,260.) To anticipate a claim, the cited reference must describe all of the claim elements of applicant's amended claims. MPEP §2131. In particular, "a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 USPQ2d 1051, 1053 (Fed. Cir. 1987); *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Komatsu cannot be an anticipation because it fails to describe essential elements of the claimed invention, including: (i) Komatsu does not describe a low density foam that is functioning to dampen vibration; (ii) Komatsu does not describe a low density foam that is in the location required by the claims, namely between the vibration mechanism and the support medium; (iii) Komatsu does not locate his vibration mechanism at or near the user, at the top of the support medium, as required by the claims; and (iv) the Komatsu device is not a "selective" alarm or alert because it does not direct vibration to any particular surface of the vibrating component or direct transmission of vibration in a manner that can alert a user on a support medium rather than anyone else on a support medium.

The present invention does not merely require a vibration mechanism, any region of foam/less-dense material and any region of more dense material somewhere in a device and/or supporting medium. The invention is specific in using such different regions and materials to provide selective direction of vibration transmission. It is the resulting selective direction of vibration transmission which provides the selectivity in alerting or alarming a user as compared to another individual on a support medium. Komatsu provides no selective transmission of vibration and does not situate a transmission region and dampening region in the locations required by the claims. Also, Komatsu teaches away from any dampening or attenuation of vibration. (See Komatsu at col. 9, lines 28-36.)

The Examiner contends that Komatsu discloses "a selective alarm device for awakening or alerting the user," and that the device contains "a vibration dampening region 56." (Office Action - page 2.). Further, the Examiner contends that "the vibration dampening region has a region having a greater density than the vibration region." (Office Action – Page 3.) The examiner's interpretation of Komatsu is incorrect.

Komatsu is directed to a sensible body vibrator mounted in a bed or chair to generate mechanical vibrations throughout the support medium. Specifically, Komatsu is a "human body support" that generates vibrations throughout the support, without any selectivity as to the region in which vibration is directed. The preferred embodiment in Komatsu appears to be a water bed, which is the only embodiment shown in figures 3-5. (See Komatsu at col. 8, lines 50-66.)

The Komatsu reference does not support the Examiner's finding that Komatsu describes a "vibration dampening region." (Office Action – page 2-3, referring

to Komatsu at col. 8, lines 63-70.). The mere presence in the Komatsu device of a foam material does not mean it is a “vibration dampening region.” The only foam element in Komatsu is “element 56” (Komatsu at col. 8, lines 63-70) and it is not present in Komatsu to dampen vibration, but rather to insulate the heater at the bottom of the support medium from melting the water bag component of the water bed. Indeed, Komatsu states that element 56 is a “heater for adjusting the water temperature...laid on the bottom of the bed frame...made of urethane and covered with waterproof cloth.” (Komatsu at col. 8, lines 64-66.) Therefore the purpose and function of the foam in Komatsu is unrelated to the vibration mechanism (elements 53/55) and cannot be a “vibration dampening region” as is required in the claimed invention. Region 56 of Komatsu, which includes the urethane material, is specifically located “on the bottom of the bed frame” and the bottom of the water bed (Komatsu at col. 8, line 65.) which is not near the vibration mechanism (elements 53/55) which is located on the side of the bed frame. (Komatsu fig. 3.) Since the urethane material is not between the vibration mechanism and the water bag, it cannot be dampening the transmission of vibration.

The second missing element in Komatsu is the requirement of the present claims to have the “dampening region” located “between the vibration mechanism and the upper surface of the support medium to minimize transmission of vibration to the support medium.” (See independent Claim 12.) Komatsu does not locate the urethane material at or near the upper surface of the support medium – but rather at the bottom of the bed - and does not locate the urethane adjacent the vibrating mechanism. In short, the location of the urethane in Komatsu is diametrically opposite to what is required by the present claims.

The third element of the claim not described in Komatsu relates to the location where the vibration member is to be used, between a support medium and a user situated on the support medium. (Claim 12.) In Komatsu, the vibrating region (Region 55) lies not on the top but on the side of the support medium and therefore not near the user. In view of the location of the vibration mechanism in Komatsu it cannot provide a distinction between a “transmission region” near the user and a “dampening region” near the support medium because the vibration unit is between the water bag and side wall of the bed frame. As stated in Komatsu, its purpose is to provide vibration throughout the support medium with no attenuation anywhere! (See Komatsu at col. 9, lines 28-36.)

The fourth difference is that Komatsu’s device cannot function as a selective alarm. Komatsu’s support medium contains a vibrating unit that can act as an alarm but Komatsu does not describe or include any embodiment that can allow the vibrating unit to function as a selective alarm device that is capable of selectively directing vibration to one region to awaken or alert one user of the device without disturbing any other person on the support medium, as required by all of the claims. Applicants do not see how the Examiner’s reference to insulation around a heater in a vibrating water bed would work as a “vibrating dampening region” to direct vibration to only selective locations or regions and thereby be a selective alarm device.

Finally, the Examiner refers to a transmission region in Komatsu. If this refers to the reinforced vinyl bag of the water bed (element 51) adjacent the vibration unit, then this cannot satisfy the transmission region requirement of the claim. The vinyl bag is not part of the “device” but part of the support medium. Also, the position of the

vinyl bag near the vibrating unit is not situated in the location for the transmission region required by the claims.

Since Komatsu fails to teach, disclose or suggest at least the four elements of the present claims discussed above, it is respectfully requested that the rejection under 35 U.S.C. §102(b) should be withdrawn.

Response to Rejection Under 35 U.S.C. §103(a)

Claims 3, 5-7, 14-16, 18, 27, 29, 31-33, and 36-39 were rejected under 35 U.S.C. §103(a) as being unpatentable for obviousness over Komatsu in view of Sleichter et al. (US-6,087,942.) Specifically, the Examiner contends that “Komatsu discloses in figures 1-8 a selective alarm device” and that “it would have been obvious to one having ordinary skill in the art at the time that the invention was made that the structural elements as taught by Sleichter could be incorporated into Komatsu in order to alert a user.” (Office Action – pages 3-4.)

Applicants traverse the examiner’s assertion that these references are properly combinable. They each present very different devices; one a water bed with a vibration mechanism installed on the side of the bed frame and the other, a foamed chair pad, with the vibration mechanism placed near the top of the chair. They also differ dramatically with respect to the foam material. In Komatsu the foamed material functions to insulate the heater from the water bag while in Sleichter the foam is the primary component of the pad core. In neither device is there a “transmission region” of material differentiated from a “dampening region” of different material, each adjacent the vibrating mechanism. “The tendency to resort to ‘hindsight’ based upon applicant’s

disclosure is often difficult to avoid due to the examination process.” MPEP §2142. Here, hindsight is the only logical explanation for combining Komatsu with Sleichter.

As discussed above, there are at least four differences between the device described in Komatsu and that described in the present claims. Even if, for argument sake here, that the teachings of Sleichter were combined with those of Komatsu, together they would not render the claims obvious nor cure the deficiencies of Komatsu.

Sleichter is directed to a “tactile alert and massaging system.” Specifically, the Examiner describes Sleichter as an “alarm device comprising a vibration member (the entire device) having a soft, synthetic foam, [and] a dampening region, having discontinuous regions...” (Office Action – page 4.) In Sleichter the vibration mechanism is placed at the top of the support medium, but the foam material surrounds the vibration mechanism so it is between the vibration mechanism and the surfaces that face both the user and the support medium. Therefore there is no “transmission region” as distinguished from a “dampening region.” Sleichter fails to cure the failures of Komatsu, and fails to provide a selective direction of vibration by use of discrete material-regions adjacent the vibrating mechanism. Sleichter also differs fundamentally from the presently claimed device. Therefore, Sleichter does not cure the deficiencies of Komatsu in describing different regions or locations of the different transmission materials.

Neither Komatsu nor Sleichter describe or suggest selectivity of an alarm for transmission to one user compared to a second user and neither reference

describes distinct “dampening” and “transmission” regions. Combining the references does not provide any of the four elements deficient in Komatsu.

Finally, the Examiner’s citations to portions of Sleichter do not appear to be accurate. For example, the “dampening regions” that the Examiner points to in Sleichter (figures 26 and 28) are described as “massage zones.” This region of foamed material located between the vibrating mechanism and the user is contrary to the present claims which require the denser, discreet region of material for transmission of vibration to be located between the user and the vibration mechanism. However, Sleichter’s figures 26 and 28 refer to the foamed material and there is no other material described to contrast with the foamed material. Further, the Examiner contends that these so-called “dampening regions” have “discontinuous regions.” (Office Action – page 4.) However, the “discontinuous regions” cited by the Examiner in Sleichter are foam areas surrounding each of 8 separate vibrating regions. These “discontinuous regions” do not create the different transmission and dampening regions that must be associated with each vibration mechanism in each vibrating member as required in the presently claimed device. Also, Sleichter does not describe or suggest a transmission region (different from a dampening region) that is near the surface of a device designated to be closest to the user and a dampening region of a device that is near the surface of a device designated to be closest the support medium.

The problem sought to be solved by the presently claimed invention, selectively directing vibration for alerting or alarming one user on a support medium as compared to another user present, is entirely absent from these references and the



configuration of the devices described in these references do not provide any solution to this problem.

Applicants respectfully request reconsideration and withdrawal of this ground of rejection.

#### Dependent Claims

The examiner has not addressed the various additional elements present in the dependent claims and shown those elements described in the prior art. For example, neither prior art reference discloses a vibration transmission region of rubber or gel (Claim 3 of claimed invention), nor does either reference contemplate a different vibration dampening region that provides a continuous lower surface for the vibrating member (Claim 4). Neither reference discloses vibration dampening regions (as distinguished from a transmission region) comprising "a plurality of discontinuous islands of material" (Claim 5) or vibration dampening regions of open-celled, flexible polymeric foam (Claim 6). Neither invention contemplates syncing the alarm device to a telephone, a motion sensor or in response to a bedwetting incident (Claim 13), or as a heart monitor or infant monitor (Claim 14). Neither prior art reference discusses gradually increasing the intensity of vibrations until the alarm mechanism is turned off (Claim 23). Neither reference contemplates a supplemental alarm (Claims 24 and 25), a snooze function (Claim 26), a weight detecting element (Claim 27), or a vibration transmission region of rubber or gels (Claim 29) found on the lower surface of the vibrating member (Claim 30). Neither Komatsu nor Sleichter discuss removable component parts in the vibrating member (Claim 35), an alarm capable of tracking and displaying time (Claim 38) or a backup alarm (Claim 40). In summary, there are many

features enumerated in the dependent claims that are not mentioned or suggested by either of the prior art references.

### **CONCLUSION**

Based on the foregoing amendments and remarks, applicants respectfully request reconsideration and withdrawal of all rejections and allowance of all presented claims.

### **AUTHORIZATION**

The Commissioner is hereby authorized to charge any additional fees which may be required for consideration of this Amendment to Deposit Account No. **13-4500**, Order No.4577-4000US.

In the event that an extension of time is required, or which may be required in addition to that requested in a petition for an extension of time, the Commissioner is requested to grant a petition for that extension of time which is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to Deposit Account No. **13-4500**, Order No.4577-4000US.

Respectfully submitted,  
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By: \_\_\_\_\_

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